

COMMUNICATION EQUIPMENT AND SERVICES, INC.

IBLA 72-114

Decided May 12, 1972

Appeal from decision by Alaska state office, Bureau of Land Management, rejecting right-of-way application.

Affirmed.

Withdrawals and Reservations: Effect of -- Withdrawals and Reservations: Revocation and
Restoration -- Rights-of-way: Applications

An application for a right-of-way on land under a form of withdrawal which precludes the granting of such applications is nugatory and cannot be given life after its date of filing, even by a restoration of land during pendency of an appeal from its rejection.

Withdrawals and Reservations: Effect of -- Alaska Native Claims
Settlement Act

Public Land Order 4582, as modified, was revoked and the withdrawal imposed thereby terminated by the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688).

APPEARANCES: Sidney C. Childers, President of Communication Equipment and Services, Inc., for the appellant.

OPINION BY MR. FRISHBERG

Communication Equipment and Services, Inc. has appealed from a decision dated September 9, 1971, by which the Alaska state office, Bureau of Land Management, rejected its application, filed January 13, 1970, for a right-of-way for a radio telephone station on public lands in Alaska. The application was rejected on two grounds: (1) the lands applied for were withdrawn from such appropriation and disposition by Public Land Order 4582, as amended; 1/ and (2) the

1/ 34 F. R. 1025 (January 23, 1969); 35 F.R. 18874 (December 11, 1970); 36 F. R. 12017 (June 24, 1971).

application failed to include a citation of the act or regulations under which the right-of-way application was filed, a statement that the applicant for the right-of-way agrees to be bound by the terms and conditions of 43 CFR 2800, or a copy of the applicant's Articles of Incorporation or reference to the land office case file in which these may be found.

Section 5 of Public Land Order 4582 provides as follows:

This order may be modified or amended by the Secretary of the Interior or his delegate upon the filing of an application which demonstrates that such modification or amendment is required for the construction of public or economic facilities in the public interest. Applications for such modification or amendment should be filed in the land office of the Bureau of Land Management, Anchorage, Alaska.

Contrary to appellant's contention, section 5 does not provide that applications for, or for the use of, public land may be granted if the grant would serve the public interest. Rather, it provides that Public Land Order 4582 may be amended upon a filing of an application to amend which demonstrates that such amendment is required for the construction of facilities in the public interest.

It does not appear that Public Land Order 4582 had been amended so as to allow the granting of the right-of-way applied for in the instant case, nor does it appear that an appropriate application to so amend had been filed.

Accordingly, appellant's application was barred by the blanket withdrawal provision of Public Land Order 4582 (section 1), regardless of whether the granting of the application would have served the public interest. Thus, appellant's application was properly rejected by the Alaska state office. Applications which are accepted for filing must be rejected and cannot be held pending possible future availability of the land when approval of the application is prevented by a withdrawal or reservation. 43 CFR 2091.1 (1972).

On appeal appellant attempted to submit the information omitted in its application to the Alaska state office. We need not consider whether the appellant successfully supplied the missing items since, as indicated above, the application was barred by Public Land Order 4582.

Public Land Order 4582 was revoked on December 18, 1971, by section 17(d)(1) of the Alaska Native Claims Settlement Act (85 Stat. 688). Thus, since December 18, 1971, appellant has not been barred by Public Land Order 4582 from making application for a right-of-way on the land in question. 2/ However, the revocation of Public Land Order 4582 imparted no new life to appellant's application filed prior to December 18, 1971. It is well settled that no rights are acquired by an application for, or for the use of, land if the land sought is withdrawn at the time the application is filed, and it is equally well settled that no rights accrue to an applicant if, pending an appeal by him from the rejection of his application for such a reason, the land is restored. Hunt v. State of Utah, 59 I.D. 44, 46 (1945). 3/

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior (211 DM 13.5; 35 F. R. 12081) the decision appealed from is affirmed.

Newton Frishberg, Chairman

We concur:

Edward W. Stuebing, Member

Joseph W. Goss, Member

2/ As to the authority to grant rights-of-way, see section 17(d)(3) of the Alaska Native Claims Settlement Act (85 Stat. 688).

3/ Of course, appellant may file another application. The Bureau of Land Management has indicated to us that it will give favorable consideration to another application by appellant, all else being regular.

